



# Supplement/Supplant Requirement for NCLB Funds

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## Definition

Under the Federal “supplement not supplant” requirement, the Tennessee Department of Education and Tennessee LEAs may use Federal funds only to supplement and, to the extent practical, increase the level of funds that would, in the absence of the Federal funds, be made available from non-Federal sources for the education of participating students. In no case may a school district use Federal program funds to supplant—take the place of—funds from non-Federal sources.

Supplement not supplant provisions generally operate the same way for all programs. Supplanting is presumed to occur in the following instances:

- The local educational agency or school district uses Federal funds to provide services that it is required to make available under other Federal, State or local law.
- The agency or school district uses Federal funds to provide services that it provided with non-Federal funds in the immediate prior years.
- The agency or school district uses Title I funds to provide services for eligible children that it provides with non-Federal funds for other children. The law does permit agencies or districts to exclude State and local funds expended for any school that operates as a schoolwide program school under section 1114, and for any school or school attendance area as part of a State or local program that is very similar to Title I (comparable program provision).

These presumptions are refutable if the agency or school district can demonstrate that it would not have been able to provide the services in question with non-Federal funds had the Federal funds not been available. For example, suppose that an agency or school district in past years had used State or local funds to pay the salaries of certain personnel. The agency/district that experienced a significant loss of revenue from one year to another might be able to demonstrate that the use this year of Federal program funds to pay for these (which are otherwise allowable under the Federal program statute), would not be supplanting because, without the Federal funds, it would not have the resources needed to maintain these positions. This exception can also be used where the services are mandated by State law. If the State mandates an after school program but provides no funds for it, this exception could be used.

Because of the importance of the supplement/supplant requirement, it is very important that

agencies and school districts maintain good fiscal records and other documentation that will permit an auditor or program monitor to conclude that they have overcome a presumption that supplanting has occurred.

### **NCLB Programs That Have a Supplement Not Supplant Requirement**

We identify below the NCLB programs that have a supplement not supplant requirement along with a citation to the relevant program statute. An asterisk (\*) identifies those programs that prohibit the supplanting of other Federal funds as well as State and local funds that otherwise would be made available.

### **No Child Left Behind Act of 2001**

Title I, Part A:	Improving Basic Programs Operated by Local Educational Agencies, <i>Section 1120A(b)</i>
Title I, Part C:	Education of Migrant Children, <i>Section 1304(c)(2)</i>
Title I, Part F:	Comprehensive School Reform,* <i>Section 1604(f)</i>
Title II, Part A:	Teacher and Principal Training and Recruiting Fund, <i>Sections 2113(f) and 2123(b)</i>
Title II, Part B:	Mathematics and Science Partnerships, <i>Section 2202(a)(4)</i>
Title II, Part D:	Enhancing Education Through Technology,* <i>Section 2413(b)(6)</i>
Title III, Part A:	English Language Acquisition, Language Enhancement, and Academic Achievement,* <i>Section 3115(g)</i>
Title IV, Part A:	Safe and Drug Free Schools and Communities, <i>Section 4113(a)(8) and 4114(d)(4)</i>
Title IV, Part B:	21 <sup>st</sup> Century Community Learning Centers,* <i>Section 4203(a)(9) and 4204(b)(2)</i>
Title V, Part A:	Innovative Programs, <i>Section 5144</i>

### **Special Cases**

**Title I Schoolwide Programs:** A school meets the requirements of a schoolwide program if, the building has a schoolwide plan consistent with the No Child Left Behind Act, Section 1114, and it is:

- Implemented in a school that meets the poverty threshold of 40 percent;
- Designed to upgrade the entire educational program in the school through the 10 schoolwide components to enable all children to meet the State's challenging student performance standards;
- Designed to meet the educational needs of all children in the school, especially those most at risk of failing.

For purposes of Federal law, in a Title I schoolwide program, a school does not provide Title I-paid services to identified children. The Title I, Part A funds are instead treated as funds available for the general support of the entire schoolwide program. Therefore, a school operating a schoolwide program does not have to: (1) show that Federal funds used within the school are

paying for additional services that would not otherwise be provided; (2) demonstrate that Federal funds are used only for specific target populations; or (3) separately track Federal program funds once they reach the school.

However, a school that operates a schoolwide program must use funds available under Title I and any other Federal programs that are combined to support its schoolwide program to supplement the total amount of funds that would, in the absence of these Federal funds, be made available from non-Federal sources for that school, including funds needed to provide services that are required by law for children with disabilities and children with limited English proficiency (Title I, Part A, Section 1114).

**Targeted Assistance Programs:** School districts may also continue to use their Title I, Part A funds for traditional targeted assistance programs. These programs are ones that, consistent with Section 1115--

- Serve only children who are failing, or most at risk of failing, to meet the State's student performance standards;
- Provide supplementary services designed to meet the special educational needs of the participating children to enable them to meet the State's student performance standards.

Unless they are mandated by State law or local board policy for all children (or otherwise provided for non-Title I children regardless of whether they are mandated), the following are examples of activities that are generally viewed as supplemental to a school district's regular programs of instruction or services: extended school year, before-and after-school and summer programs, and additional in-class support targeted to eligible children.

(Note: All Title I schoolwide program schools and all schools that operate Title I targeted assistance programs must use the State's system of assessment to review the effectiveness of the program. Also, districts must meet the annual comparability requirements of Title I.)

**Limited English Proficiency:** This supplement not supplant requirement does not preclude an agency or school district from using Title III Limited English Proficiency (LEP) program funds for activities carried out under--

- A Federal or State court order respecting services to be provided to LEP children, or
- A plan approved by the Secretary as adequate under Title VI of the Civil Rights Act of 1964 with respect to services to be provided to LEP children (Title VII, Section 7116(h)(4) of ESEA, prior to enactment of NCLB).

### **Suggestions for Demonstrating That, in the Absence of NCLB Program Funds, Services Would Have Been Eliminated**

Determining when supplanting has or has not occurred, i.e., whether in the absence of Federal program funding, an agency or school district would have continued to provide services with State and local funds, will depend on an assessment of the individual facts and circumstances of each situation. This assessment, in turn, will depend upon a review of the available agency or

district records. There is no precise formula for determining what kinds of records will overcome a presumption of supplanting, or otherwise demonstrate that Federal funds were used in a supplemental manner. However, there are some things an agency or district can do to be in the best position possible to demonstrate that its actions are proper.

In particular, an agency or district that believes it could not maintain services previously paid with State or local funds had Federal program funds not been available should--

1. Be able to demonstrate a decrease of State and local funds from the prior year, and the maintenance or increase in standard operating costs (salaries, benefits, supplies, etc.) from the prior year;  
OR  
Be able to demonstrate that any increase in State and local funds is less than increases of the standard operating costs, and State/local funds have not been redirected to a new activity;  
AND
2. Be able to demonstrate the agency's board is on record as deciding to eliminate the activity under question unless a new source of funds is made available from non-State and non-local funds (in the absence of State and local funds); and the activities to be funded under a particular Federal program are clearly consistent with the purposes of that program.